

review, including information concerning the availability of such devices and techniques, the categories of exposed individuals as to whom use of such devices and techniques may be appropriate, and the reliability and accuracy of dose estimates which may be derived from such devices and techniques; and

“(C) enter into an interagency agreement with the Administrator of Veterans' Affairs [now Secretary of Veterans Affairs] for the purpose of assisting the Administrator in identifying agencies or other entities capable of furnishing services involving the use of such devices and techniques.

“(b) The Administrator of Veterans' Affairs [now Secretary of Veterans Affairs], in resolving material differences between a radiation dose estimate, from a credible source, submitted by a veteran or survivor and a radiation dose estimate prepared and transmitted by the Director of the Defense Nuclear Agency, shall provide for the preparation of a radiation dose estimate by an independent expert, who shall be selected by the Director of the National Institutes of Health and who shall not be affiliated with the Defense Nuclear Agency, and the Administrator shall provide for the consideration of such independent estimate in connection with the adjudication of the claim for Veterans' Administration [now Department of Veterans Affairs] compensation.”

[Pub. L. 102-4, §10(e), Feb. 6, 1991, 105 Stat. 20, as amended by Pub. L. 102-86, title V, §503(b)(2), Aug. 14, 1991, 105 Stat. 425, provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 2 and 3 of Pub. L. 98-542, set out above, and sections 5 and 6 of Pub. L. 98-542, set out above] shall take effect at the end of the two-month period beginning on the date of the enactment of the Veterans' Benefits Programs Improvement Act of 1991 [Aug. 14, 1991].

“(2)(A) If the Secretary of Veterans Affairs determines before the end of such period that the Environmental Hazards Advisory Committee established under section 6 of Public Law 98-542 (38 U.S.C. 354 note) [set out above] has completed its responsibilities under that section and the directives of the Secretary pursuant to the Nehmer case court order, the amendments made by this section shall take effect as of the date of such determination.

“(B) For purposes of this paragraph, the term ‘Nehmer case court order’ means the court order dated May 2, 1989, in the case of *Nehmer v. Department of Veterans Affairs*, in the United States district court for the northern district of California (civil action docket number C-86-6160 TEH).

“(3) If the Secretary makes a determination under paragraph (2), the Secretary shall promptly publish in the Federal Register a notice that such determination has been made and that such amendments have thereby taken effect as of the date of such determination.”]

IDENTIFICATION OF ACTIVITIES INVOLVING EXPOSURE TO IONIZING RADIATION BEFORE JANUARY 1, 1970

Section 10 of Pub. L. 98-542, as added by Pub. L. 102-578, §3, Oct. 30, 1992, 106 Stat. 4774, provided that:

“(a) IN GENERAL.—(1) In order to determine whether activities (other than the tests or occupation activities referred to in section 5(a)(1)(B) [probably means section 5(a)(1), set out above]) resulted in the exposure of veterans to ionizing radiation during the service of such veterans that occurred before January 1, 1970, and whether adverse health effects have been observed or may have resulted from such exposure in a significant number of such veterans, the Advisory Committee established under section 6 [set out above] shall—

“(A) review all available scientific studies and other relevant information relating to the exposure of such veterans to ionizing radiation during such service;

“(B) identify any activity during which significant numbers of veterans received exposure; and

“(C) on the basis of such review, submit to the Secretary of Veterans Affairs a report containing the

recommendation of the Advisory Committee on the feasibility and appropriateness for the purpose of the determination under this paragraph of any additional investigation with respect to any activity of such veterans during such service.

“(2) Upon the request of the Advisory Committee, the Secretary of Veterans Affairs (after seeking such assistance from the Secretary of Defense as is necessary and appropriate) shall make available to the Advisory Committee records and other information relating to the service referred to in paragraph (1) that may assist the Advisory Committee in carrying out the review and recommendation referred to in that paragraph.

“(3) The Advisory Committee shall submit to the Secretary of Veterans Affairs the report referred to in paragraph (1)(C) not later than August 1, 1993.

“(b) INVESTIGATION PLAN AND REPORT.—(1) Upon receipt of the report referred to in subparagraph (C) of subsection (a)(1), the Secretary of Veterans Affairs shall—

“(A) identify which of the activities referred to in that subparagraph, if any, that the Secretary intends to investigate more fully for the purpose of making the determination referred to in that subsection; and

“(B) prepare a plan (including a deadline for the plan) to carry out that investigation and make that determination.

“(2) Not later than December 1, 1993, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report containing—

“(A) a list of the activities identified by the Secretary pursuant to paragraph (1)(A) and the basis of such identification;

“(B) a copy of the report of the Advisory Committee referred to in subsection (a)(1)(C); and

“(C) the plan referred to in paragraph (1)(B).”

INTERIM BENEFITS FOR DISABILITY OR DEATH IN CERTAIN CASES

Section 9 of Pub. L. 98-542 provided for payment of interim monthly disability benefits to veterans who had served in Vietnam during Vietnam era and who had diseases chloracne and porphyria cutanea tarda which manifested themselves within one year after date of veteran's most recent departure from Vietnam, but with no such interim benefits to be paid after Sept. 30, 1986.

RADIATION EXPOSURE STUDY AND GUIDE

Pub. L. 98-160, title VI, Nov. 21, 1983, 97 Stat. 1006, as amended by Pub. L. 98-542, §8(b), Oct. 24, 1984, 98 Stat. 2732, provided for the conduct of an epidemiological study of long-term adverse health effects of exposure to ionizing radiation from detonation of nuclear devices in connection with tests of such devices or in connection with occupation of Hiroshima and Nagasaki, Japan, between Sept. 11, 1945, and July 1, 1946, and provided for reports to Congress on studies made together with recommendations as to necessary legislation.

§ 1155. Authority for schedule for rating disabilities

The Secretary shall adopt and apply a schedule of ratings of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity resulting from such injuries in civil occupations. The schedule shall be constructed so as to provide ten grades of disability and no more, upon which payments of compensation shall be based, namely, 10 percent, 20 percent, 30 percent, 40 percent, 50 percent, 60 percent, 70 percent, 80 percent, 90 percent, and total, 100 percent. The Secretary shall from time to time readjust this schedule of ratings in accordance with experi-

ence. However, in no event shall such a readjustment in the rating schedule cause a veteran's disability rating in effect on the effective date of the readjustment to be reduced unless an improvement in the veteran's disability is shown to have occurred.

(Pub. L. 85-857, Sept. 2, 1958, 72 Stat. 1125, § 355; Pub. L. 98-223, title I, § 101(c), Mar. 2, 1984, 98 Stat. 38; renumbered § 1155 and amended Pub. L. 102-83, §§ 4(b)(1), (2)(E), 5(a), Aug. 6, 1991, 105 Stat. 404-406; Pub. L. 102-86, title I, § 103(a), Aug. 14, 1991, 105 Stat. 414.)

AMENDMENTS

1991—Pub. L. 102-86 amended this section as in effect before the redesignations made by Pub. L. 102-83, § 5, by inserting at end "However, in no event shall such a readjustment in the rating schedule cause a veteran's disability rating in effect on the effective date of the readjustment to be reduced unless an improvement in the veteran's disability is shown to have occurred."

Pub. L. 102-83, § 5(a), renumbered section 355 of this title as this section.

Pub. L. 102-83, § 4(b)(1), (2)(E), substituted "Secretary" for "Administrator" in two places.

1984—Pub. L. 98-223 substituted "percent" for "per centum" wherever appearing.

EFFECTIVE DATE OF 1991 AMENDMENT

Pub. L. 102-86, title I, § 103(b), Aug. 14, 1991, 105 Stat. 415, provided that: "The amendment made by subsection (a) [amending this section] shall apply with regard to changes in rating schedules that take effect after the date of the enactment of this Act [Aug. 14, 1991]."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-223 effective Apr. 1, 1984, see section 107 of Pub. L. 98-223, set out as a note under section 1114 of this title.

§ 1156. Temporary disability ratings

(a) ASSIGNMENT OF TEMPORARY RATINGS.—(1) For the purpose of providing disability compensation under this chapter to veterans, the Secretary shall assign a temporary disability rating to a veteran as follows:

(A) To a veteran who—

(i) was discharged or released from active duty not more than 365 days before the date such veteran submits a claim for disability compensation under this chapter;

(ii) has one or more disabilities for which a rating of total is not immediately assignable—

(I) under the regular provisions of the schedule of ratings; or

(II) on the basis of individual unemployment; and

(iii) has one or more—

(I) severe disabilities that result in substantially gainful employment not being feasible or advisable; or

(II) healed, unhealed, or incompletely healed wounds or injuries that make material impairment of employability likely.

(B) To a veteran who, as a result of a highly stressful in-service event, has a mental disorder that is severe enough to bring about the veteran's discharge or release from active duty.

(C) To a veteran who has a service-connected disability that requires hospital treatment or

observation in a Department of Veterans Affairs or approved hospital for a period in excess of 21 days.

(D) To a veteran who has a service-connected disability that has required convalescent care or treatment at hospital discharge (regular discharge or release to non-bed care) or outpatient release that meets the requirements of regulations prescribed by the Secretary.

(2) With respect to a veteran described in paragraph (1)(A), the Secretary may assign a temporary disability rating to such veteran regardless of whether such veteran has obtained a medical examination or a medical opinion concerning such veteran's disability.

(3) With respect to a veteran described in paragraph (1)(B), the Secretary shall schedule a medical examination for such veteran not later than six months after the separation or discharge of such veteran from active duty.

(b) TERMINATION OF TEMPORARY DISABILITY RATINGS.—(1) Except as provided in paragraph (2), a temporary disability rating assigned to a veteran under this section shall remain in effect as follows:

(A) For a veteran who is assigned a temporary disability rating under subsection (a)(1)(A), until the later of the date that is—

(i) 12 months after the date of discharge or release from active duty; or

(ii) provided in regulations prescribed by the Secretary.

(B) For a veteran who is assigned a temporary disability rating under subsection (a)(1)(B), until the date on which a rating decision is issued to such veteran following the medical examination scheduled under subsection (a)(3).

(C) For a veteran who is assigned a temporary disability rating under subsection (a)(1)(C), until the later of the date that is—

(i) the last day of the month in which the veteran is discharged from the hospital as described in such subsection (a)(1)(C); or

(ii) provided in regulations prescribed by the Secretary.

(D) For a veteran who is assigned a temporary disability rating under subsection (a)(1)(D), until the date that is provided in regulations prescribed by the Secretary.

(2) The Secretary may extend a temporary disability rating assigned to a veteran under subsection (a) beyond the applicable termination date under paragraph (1) if the Secretary determines that such an extension is appropriate.

(c) REGULATIONS.—The Secretary shall prescribe regulations to carry out the provisions of this section.

(d) CONSTRUCTION.—Nothing in this section shall be construed to preclude the Secretary from providing a temporary disability rating under an authority other than this section.

(Added Pub. L. 110-389, title II, § 211(a), Oct. 10, 2008, 122 Stat. 4149.)

CODIFICATION

Prior to renumbering of sections 301 to 363 of this chapter as sections 1101 to 1163 by Pub. L. 102-83, § 5(a),